

## UNITED STATES DISTRICT COURT

for the  
District of New MexicoFILED  
UNITED STATES DISTRICT COURT  
DISTRICT OF NEW MEXICO

15 NOV 10 AM 9:24

CLERK-LAS CRUCES

## In the Matter of the Search of

(Briefly describe the property to be searched  
or identify the person by name and address)A black DeWalt toolbox, believed to belong to AYALA,  
located at the Las Cruces FBI Office at 505 South Main  
Street, Suite 115, Las Cruces, New Mexico

Case No.

15-723MR

## APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):

See Attachment A.

located in the \_\_\_\_\_ District of \_\_\_\_\_ New Mexico \_\_\_\_\_, there is now concealed (identify the person or describe the property to be seized):

See Attachment B.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☐ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section  
Title 18, Section 922(g)Offense Description  
Felon in Possession of a Firearm and/or AmmunitionThe application is based on these facts:  
See Attachment B☒ Continued on the attached sheet.

☐ Delayed notice of \_\_\_\_\_ days (give exact ending date if more than 30 days: \_\_\_\_\_) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Sworn to before me and signed in my presence.

Date: 10 Nov 2015

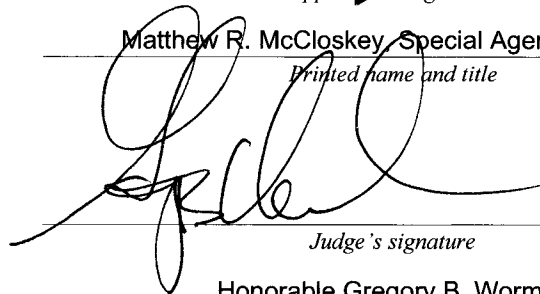
City and state: Las Cruces, New Mexico

Matthew R. McCloskey

Applicant's signature

Matthew R. McCloskey, Special Agent of the FBI

Printed name and title



Judge's signature

Honorable Gregory B. Wormuth

Printed name and title

**AFFIDAVIT IN SUPPORT OF SEARCH WARRANT**

I, Matthew R. McCloskey, being first duly sworn, hereby depose and state as follows:

1. I am a Special Agent (SA) of the Federal Bureau of Investigation (FBI), United States Department of Justice. I have been employed by the FBI since July 2014 and I have been assigned to investigate violations of Federal Law. I am a “federal law enforcement officer” within the meaning of Federal Rule of Criminal Procedure 41(a)(2)(C). My law enforcement experience includes, but is not limited to, conducting surveillance, interviewing subjects, targets and witnesses, writing affidavits for and executing search warrants

2. The affidavit is being submitted for the limited purpose of obtaining a search warrant to search the interior, exterior and contents of the black DeWalt toolbox described in Attachment “B” in order to procure evidence and or instrumentalities of violations of: Title 18 U.S.C. § 922(g) Felon in Possession of a Firearm or Ammunition. I have not included each and every fact known to me or other law enforcement agents concerning this investigation.

**FACTS AND CIRCUMSTANCES ESTABLISHING PROBABLE CAUSE**

3. The FBI initiated an investigation into CANDELARIO AYALA (AYALA) and his alleged possession of a firearm and ammunition on October 23, 2015, in Dona Ana County, New Mexico. On October 24, 2015, at approximately midnight, the FBI agents were called to assist the Doña Ana County Sheriff’s Office (DASO) regarding a kidnapping having occurred at approximately 10:30 p.m. on October 23, 2015, at 960 McKinley Avenue, Anthony, New Mexico. AYALA, known and positively identified by witnesses and the kidnap victim (V-1), arrived at a residence in the 900 block of McKinley Avenue, Anthony, New Mexico in search of V-1, whom had recently left living with AYALA, with whom he/she was involved in a relationship. Witness 1 (W-1), an adult residing in the residence stated he/she observed AYALA, whom he/she knew on sight, to be carrying a small black handgun in his right hand. Upon entering the residence, in search of the V-1, AYALA entered the living room area, where he fired the weapon into the floor, causing the bullet to pass through the wooden floor leaving a hole in the flooring.

4. Witness 2 (W-2), a juvenile, present inside the residence, observed AYALA enter the house holding a handgun. Once inside the residence, AYALA fired the weapon into the living room floor, in the general direction of W-2, striking the floor near where W-2 was located.

5. The adult kidnapping victim (V-1), who was later interviewed regarding the incident, stated he/she was in the bathroom in the residence when AYALA, whom V-1 is familiar with, arrived. V-1 could hear a male voice—which V-1 knew to be AYALA’s voice—inside the residence. V-1 heard a loud noise, which he/she believed to be a gunshot. V-1 emerged from the bathroom and saw AYALA

holding a small black handgun in his hand. V-1 stated the handgun was small and possibly a .22 or .38 caliber. V-1 had previously seen bullets in AYALA's possession, which V-1 remembered .38 being stamped upon.

6. On November 3, 2015, AYALA was arrested in a hotel parking lot in El Paso, Texas for being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g). At the time of arrest, AYALA was in possession of a black 2006 Dodge Charger, and was actively trying to gain entry into the driver's door of the vehicle, after realizing the keys had been locked inside. AYALA indicated he was borrowing the vehicle with permission. The vehicle was seized and towed pending a search warrant. At the time of arrest, AYALA was advised of his Miranda rights and agreed to waive them and speak to law enforcement. AYALA denied ever having possessed a firearm since he was a child and additionally denied any allegations of wrongdoing with V-1.

7. On November 5, 2015, law enforcement obtained and executed a Federal search warrant on the 2006 Dodge Charger, searching for evidence related to a violation of Title 18 U.S.C. § 922(g) Felon in Possession of a Firearm or Ammunition. No firearms or ammunition were found inside the 2006 Dodge Charger.

8. On November 5, 2015, FBI received information from another member of law enforcement whom had received information from a source of proven reliability (C-1). C-1 had stated they believed AYALA had recently been in contact with an adult (A-1), (a person whom law enforcement knows the identity of). C-1 thought it likely AYALA was storing his belongings at A-1's house, which law enforcement knew to be at a specific address located in Las Cruces, New Mexico. On November 5, 2015, at approximately 4:45 p.m., agents with FBI made consensual contact at the known address, with A-1. A-1 admitted he/she knew AYALA, and positively identified a known photograph of AYALA. A-1 stated AYALA had been at his/her residence on November 3, 2015—the day AYALA was later arrested—and that AYALA was driving a black Dodge Charger at the time. AYALA had brought a rifle style firearm into the residence and stated he wanted to leave it there. AYALA placed it in the bathroom located off the master bedroom where A-1 maintains dominion and control. A-1 allowed FBI agents access to the bathroom area to remove the firearm. FBI agents removed the firearm from the residence and now maintains control over the firearm. A-1 also stated to FBI agents that he/she was a felon.

9. The firearm was determined to be a Ruger model 10/22 carbine, Serial Number 111-45459, .22 L.R. caliber.

10. On November 6, 2015, in the morning hours, FBI agents learned of a recorded jail call during which AYALA was directing others, to go to A-1's house and retrieve his toolbox and take it to a

safe place. Acting on this information, FBI agents reached back out to A-1 at his/her residence. A-1 stated that AYALA had also left a toolbox, containing his items, at his/her residence on November 3, 2015—the same time AYALA had left the aforementioned Ruger firearm—but A-1 had forgotten to mention it when agents were at his/her residence on November 5, 2015. A-1 stated he/she had not opened or disturbed the toolbox since AYALA left it at his/her residence, and did not know what it contained. A-1 allowed Agents to remove the toolbox from his/her residence. The toolbox was secured at the FBI Las Cruces Resident Agency pending a search warrant, where it remains.

11. On November 6, 2015, in the evening, an FBI agent was alerted to a recorded jail call made by AYALA, in which he asked a family member (name withheld), who is known by law enforcement to reside at a residence in the 400 block of Marquez St, Anthony, New Mexico, and also asked the owner of the 2006 Dodge Charger (Charger), to remove an items AYALA described as “money”, from within the vehicle. AYALA directed them to an area by the windshield and rear view mirror to retrieve the “money”. The family member was able to retrieve an item concealed in the area they were directed to search by AYALA.

12. Based on my training and experience, I am aware that items such as firearms and ammunition, are often concealed or maintained within containers, and a handgun or ammunition could be easily concealed within the size of a toolbox such as the one your affiant is requesting a warrant to search. Also, handles, clasps, and the interior and/or exterior of items often contain the fingerprints and/or DNA of suspects who have handled the items(s). I am aware that DNA evidence is easily transferred to metal and plastic surfaces, such as the black DeWalt toolbox is manufactured of, and that this evidence may not be visible to the naked eye. The evidence, if it exists, may assist in determining the identity of any person who may have handled the toolbox, firearms, ammunition and/or their packaging or container they were concealed within.


13. Through the course of this investigation, a Ruger rifle was seized from a house in Las Cruces, New Mexico, based in part on information received from other law enforcement officials and/or information obtained during the course of telephone calls made by AYALA from within the Doña Ana County Detention Center. The small, back semi-automatic handgun, which multiple witnesses described having seen AYALA possess, and fire on October 23, 2015 in Anthony, New Mexico has yet to be located. Based on the jail calls, and the urgency in which AYALA had been attempting to get others to assist him in retrieving the toolbox and taking it to a safe location leads law enforcement to believe the .380 handgun may be currently inside of the DeWalt toolbox, which AYALA left at A-1's residence at the same time he is said to have left the Ruger rifle.

**CONCLUSION:**

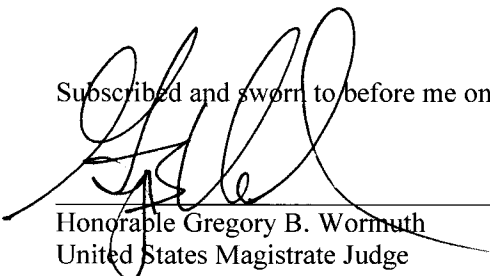
17. I believe that based upon the information contained herein, there is probable cause to obtain warrants to search the interior, exterior and contents of the black DeWalt toolbox, to include collecting DNA swabs from the interior, exterior and contents of the black DeWalt toolbox believed to contain and possess items under AYALA'S control immediately preceding his arrest on November 3, 2015 and still under AYALA'S directed care at the time it was seized by Agents on November 6, 2015, in order to procure evidence and or instrumentalities of violations of: Title 18 U.S.C. § 922(g) Felon in Possession of a Firearm or Ammunition.

18. This affidavit has been reviewed by Assistant United States Attorney Marisa Lizarraga of the District of New Mexico.

Respectfully submitted,

  
Matthew R. McCloskey  
Special Agent  
Federal Bureau of Investigation

Subscribed and sworn to before me on November 10, 2015:

  
Honorable Gregory B. Wormuth  
United States Magistrate Judge

**ATTACHMENT A**

The property to be searched is a black DeWalt toolbox, believed to belong to AYALA, located at the Las Cruces FBI Office at 505 South Main Street, Suite 115, Las Cruces, New Mexico. A picture of the front and back of the toolbox is attached.



*Extra mmm*

**ATTACHMENT B**

This warrant authorizes the search of the toolbox, described in Attachment A, for evidence that relates to violations of Felon in Possession of Firearm/Ammunition, in violation of 18 U.S.C. § 922(g).

The items to be seized include the following:

Any firearms, ammunition, cases or holsters for any firearms or ammunition, and any magazines that may be associated with any firearms or ammunition. Any evidence of ownership contained within the toolbox. This warrant allows for the search of any containers inside the toolbox that may contain any of the items listed above.

